

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**EARNEST LEE LANGSTON,
APPELLANT
vs.**

**MISSOURI BOARD OF PROBATION AND PAROLE,
RESPONDENT**

DOCKET NUMBER WD72283

DATE: NOVEMBER 30, 2010

Appeal from:

The Circuit Court of Cole County Circuit Court
The Honorable Patricia S. Joyce, Judge

Appellate Judges:

Division One: Thomas H. Newton, P.J., James M. Smart, Jr. and Joseph M. Ellis, JJ.

Attorneys:

Earnest L. Langston, Appellant Pro-se

Michael J. Spillane, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

EARNEST LEE LANGSTON, APPELLANT

v.

MISSOURI BOARD OF PROBATION AND PAROLE, RESPONDENT

WD72283

Cole County, Missouri

Before Division One Judges: Thomas H. Newton, P.J., James M. Smart, Jr. and Joseph M. Ellis, JJ.

Earnest Langston is presently serving sentences in the Missouri Department of Corrections of three consecutive terms of life imprisonment and additional consecutive sentences totaling 224 years imprisonment resulting from a series of crimes he committed in June 1990. After being informed by the Board of Probation and Parole that he would never be eligible for parole and would never be afforded a parole hearing, in September 2009, Langston filed a *pro se* petition for declaratory judgment seeking a declaration that the Board had erroneously determined that he would never be eligible for parole and miscalculated his parole eligibility in contradiction to § 217.690(4) and ***Wolf v. Missouri Department of Corrections***, 199 S.W.3d 219 (Mo. App. W.D. 2006). In October 2009, Langston filed a “Supplemental Petition for Declaratory Judgment Relief” asking that an additional claim be added to his original petition. The trial court subsequently granted the Board’s motion for judgment on the pleadings. Both the motion and the judgment only addressed the claim from the supplemental petition. After his motion to set aside the judgment based upon the trial court’s failure to address the claims from his original petition was denied, Appellant filed this appeal.

DISMISSED and REMANDED FOR FURTHER PROCEEDINGS.

Division One holds:

- (1) The filing of Appellant’s Supplemental Petition result in the waiver of the claims contained in the original petition where the language of the Supplemental Petition clearly reflected a desire to supplement, and not replace, the prior petition, specifically asking that the supplemental claim be added to the original petition.
- (2) Where the trial court fails to resolve all issues before the court or to expressly designate that no just reason exists for delaying appeal under Rule 74.01(b), we must dismiss the appeal.

Opinion by: Joseph M. Ellis, Judge

Date: November 30, 2010

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